

Workshop Summaries

Welcoming Comments

Over the past year, the United States has witnessed the largest increase in transit ridership; however, with the economic recession and the increased wear and tear on transit systems, the backlog of maintenance continues to grow and demands for transit exceed its current capacity. The majority of transit funding comes from the gas tax and sales tax revenues, neither of which are adequate for its needs. Even when capital is available for projects, completion typically does not occur for many years; in some cases it can take upward of ten years. The convergence between ridership demands and capital shortfalls will not disappear in the next few years unless major policy changes are made. One possible policy solution is to embrace public-private partnerships (PPPs) as an innovative tool that can be used to complement federal and state efforts. PPPs can reduce construction and life-cycle costs, accelerate delivery and provide access to private capital. Representatives of both the San Diego Metropolitan Transit System (MTS) and the North County Transit District discussed how their agencies use PPPs to help implement their goals.

The Language of Public-Private Partnerships

Public-private partnerships (PPPs) cover a wide range of projects and the acronyms can be confusing for people unfamiliar with PPPs, especially because different states use different terms instead of PPPs. The presenter of this session strove to simplify the common language of PPPs, beginning with the letters used in common acronyms:

- D – Design
- B – Build
- O – Operate or Own (set by context)
- F – Finance
- M – Maintain/Manage
- T – Transfer to public ownership

This presentation outlined several different types of PPP projects and explained the benefits of each (list is not exhaustive): (1) O&M, (2) OMM, (3) DB, (4) DBOM, (5) DBFOM, (6) DBFOMT, (7) Developer Finance, (8) EUL and (9) Lease/Purchase. Although the types of PPPs listed above follow a standard pattern, there is no limit for innovation in PPPs and when the private sector is given the flexibility to be creative, it can come up with remarkable things. However, without a political champion and a dedicated team within the public agency, PPPs typically will not work.

Statutory and Regulatory Requirements and Lessons Learned Internationally

In order for an agency to enter into a PPP, the agency must have the statutory authority, whether in the form of state or jurisdictional legislation. Statutes can be broad, agency specific or project specific and vary across the U.S. Before trying to put together a PPP, public officials need to

make sure other procurement laws do not restrict any of the elements of PPPs. For instance, some states appropriate design and construction funding in different years, which counteracts the benefits of design-build. Strong PPP legislation would include the ability to bundle design, construction, operations, maintenance and financing; enter into leases and enter into multi-year contracts. Other elements to consider include:

- Unsolicited proposals
- Short-listing
- Pre-award negotiations
- Stipends for non-winning bids

Proponents of PPP legislation need to make sure they have thoroughly explained the concept of PPPs and their benefit otherwise policy makers will be less likely to support the legislation. PPP programs in the UK and Canada were explained and provided insight into how other countries are utilizing PPPs. Information on California SBX2 4 (the recently passed PPP law for CA) was provided as well as examples of two southern California highway PPP projects.

Case Studies – Examples of State of Good Repair

FTA conducted a study of the state of good repair of the nine largest transit agencies in the U.S. The level of state of good repair was determined on a scale of 1 to 5 (with 5 as the best and scores of less than 2.5 requiring maintenance) through the evaluation of the following categories: (1) age of the asset, (2) condition of the asset through a field inspection, (3) customer safety, (4) backlog of maintenance and (5) deferred maintenance. Although the agencies in the study complete 5.5 billion trips a year, the majority of the trips occur along some of the oldest tracks in the country. An estimated \$50 to \$90 billion is needed to address their backlog—about one-third of the nine's agencies' assets are in marginal or poor condition—and another \$5.9 billion annually to maintain the assets once the backlog is addressed. Several challenges are present when attempting to reach a state of good repair, including limited funding, asset age for many of the older systems, the need to provide service while making repairs and political will (it can potentially be more favorable to expand service than to maintain current service). LA Metro has completed and/or is working on several state of good repair projects for its bus divisions as well as a service contract for escalators and elevators. Planners for TriMet of Portland, Oregon have found asset age and the importance of the asset to be challenges to overcome when trying to bring the system into a state of good repair. A case study was presented of a steel bridge in downtown Portland that is used by light rail, heavy rail, vehicles and pedestrians needed to be repaired and changed were necessary to accommodate a new light rail line. A year of planning was needed for a 21-day shutdown to traffic and a 24-7 construction schedule to repair the bridge.

Guidelines for Surface Transportation Reauthorization: The Transit Industry Perspective

The 2009 authorization for surface transportation is undergoing consideration in Congress at the time of this workshop and may be signed into law in the fall. The approach taken with this bill should be a multi-modal approach, not piecemeal as most transportation legislation has been. All

modes of transportation should be planned, managed and financed as interrelated pieces of the same system. The authorization should also expand the innovative programs under SAFETEA-LU in part because they are policies that can benefit many areas, and to gain support for them, people need to see how successful they can be. The bill should look to integrate different modes of transportation along the same corridor into one project for funding and sustainment. Another important factor to consider in the legislation is the use of value capture mechanisms such as transit oriented development and tax increment financing. The bill should also streamline project delivery, including approval and procurement, whenever possible (for example the FTA New Starts Program). The new approach needs to recognize that without public resources there can be no partnerships because leveraging public assets is one of the keys to successful partnerships.

Financing Transit PPPs

With the credit markets recovering slowly and limited government funding—even a doubling of FTA funding, which was proposed by the House T&I Committee, will not be enough to address the enormous maintenance backlog and expansion needs—agencies need to devise other ways to fund their projects. The Highway Trust is another funding source which is not sustainable and limited in its funding. Agencies must turn to other funding sources. PPPs are a great tool for gaining a lower cost project delivery and competitive bidding; but, with current economic conditions, projects become slightly more difficult to do. Adding private funding to the mix allows the public agency to leverage its limited funds. The concept of availability payments is gaining traction in the US for transit projects because ridership/farebox risk has been difficult to transfer to the private sector and by using availability payments, the public agency does not start making payments until construction is complete (for this reason, many projects are delivered ahead of schedule, as private companies want to get paid). Many transit agencies, like LA Metro, use PPPs for a wide range of projects, including many smaller scale projects and development projects (transit oriented development). Risk allocation and life-cycle costing are two important components of financing PPPs. Many equity funds, especially those investing pension funds, still consider PPPs a relatively safe investment. Even though credit markets are not as open as they were last year, PPP deals are still occurring; equity funds and banks are simply being more cautious about where they invest.

Preparing an RFP

Prior to issuing a Request for Proposals (RFP), public agency officials need to a large amount of upfront work to help increase the likelihood the project will receive favorable bids. The first step is to outline the goals and objectives of the project and then complete several steps in preliminary planning to decide what needs to be included in an RFP. To create an effective RFP, public agency officials need to strike a balance between defining project scope and private sector innovation. If they are too strict in the scope, the private sector has limited ability to be innovative, but if they do not provide enough definition, the public agency runs the risk of not getting bids or getting bids that will not benefit the public. One of the most important components to consider is risk allocation because as more risk is transferred to the private sector, the higher the project costs will be. Issuing Requests for Information (RFI) and Requests for Qualifications (RFQ) can be beneficial tools that provide insight about and from potential private

sector partners and can be used to strengthen a RFP. Several brief case studies focused on the procurement process were provided.

Lessons Learned from a Penta-P

The Regional Transportation District (RTD) of Denver, CO was selected as one of the programs for FTA's Pilot Public Private Partnership Program (Penta-P). RTD has used PPPs for several different projects, including the T-REX project, which contains both highway and transit and was completed 22 months early and \$30 million under budget. The newest PPP, the Gold Line of the Eagle Project—construction of two lines, one corridor and a maintenance facility, as well as the operation and maintenance of these assets—is one of the FTA Penta-P projects.

A draft RFP for industry review was released in December 2008, but given the uncertainty surrounding the federal transportation appropriations bill, the final RFP's scheduled distribution of May 2009 was postponed. The Eagle Project meets the Penta-P goals of reducing risk, saving time, saving money and delivering a high quality project. To meet the first goal, risks were allocated to the party that can most cost-effectively manage them. To save time, the New Starts process was streamlined under the Penta-P program and limited FTA funds will be used during the design-build portion of the project as an incentive to deliver ahead of schedule. Money will be saved for the Eagle Project because the draft RFP process led to the identification of major cost concerns, which are being addressed prior to the issuance of the final RFP. Several key lessons about the use of PPPs were outlined, including the importance of developing a plan and sticking to it, staying prepared but flexible at the same time, risk transfer comes at a cost and the importance of developing a strong partnership.

Luncheon Keynote

David Crane, Special Advisor for Jobs and Economic Growth for Governor Arnold Schwarzenegger, gave the luncheon keynote address. He discussed transit, the recent passage of PPP legislation for transportation projects and high speed rail in California. The CA PPP legislation, SBX2 4, allows unlimited PPPs for transportation projects through 2017 and granted design-build approval for ten projects through Caltrans, five for local projects, five for the General Service Department and ten for redevelopment agencies. Many of the projects currently under consideration are for highways and bridges. In November, voters approved Proposition 1A which guarantees \$9.95 billion in state bond money to fund the proposed 800-mile high speed train system and people have spent the past few months preparing and planning for ARRA funding to enhance the early high speed projects. Given the enormous cost of high speed rail, the project was split into eight smaller segments, with the segments competing against each other for the first share of the funding.

Case Studies: Major Capital Projects

In addition to State of Good Repair projects, transit agencies also have major capital projects they undertake in an effort to expand or improve service. Many of these projects can be very extensive and require significant time and money. To save both, PPPs are one tool that can be utilized. Case studies for this panel included the CA high speed rail project and the Anaheim

Regional Transportation Intermodal Center (ARTIC) project in the heart of Orange County. In May 2007, the high speed rail board adopted the Anaheim to San Francisco as the first phase, based in part on ridership estimates. The ARTIC project falls along an important rail corridor in Orange County, which is the second busiest corridor behind the northeast corridor. Both projects are in the planning stages, but will strongly impact the surrounding areas when they are completed. Details about funding and project design were presented by the panelists.

The American Recovery and Reinvestment Act and Implications for Transit PPPs

Funding to FTA for fiscal year 2009 is the highest funding ever been, through a combination of the regular appropriations and funding through the American Recovery and Reinvestment Act (ARRA). The ARRA as it applies to FTA and transit was thoroughly explained, with particular emphasis placed on the goal of job creation. Information on the types of programs, details about the guidelines and timeline for applications were explained. As of June 26th, \$47.5 billion worth of projects have been announced and \$20.5 billion has been obligated for transportation projects. FTA will make about 1,200 grants for the \$8.4 billion allocated for transit projects. A rule was changed and transit agencies are now allowed to use up to 10 percent of ARRA funds for operations. FTA has received applications for over \$3 billion worth of projects for the \$100 million in funding through the new discretionary energy program to reduce energy consumption and/or reduce greenhouse gas emissions. Examples of what transit agencies are doing with ARRA funds were presented for the Orange County Transportation Authority (OCTA) and the San Diego Metropolitan Transit System (MTS). The leadership OCTA began looking at potential projects when the stimulus package was first discussed because they wanted to be ready when the bill passed. They also appreciated the way FTA issued grants for the ARRA funding because it saved a step by not going through the state. MTS is using its ARRA funding to rehabilitate its blue line, which is the oldest line in its system. MTS will replace the contact wires, rails in curves and track switches, as well as upgrade substation relays and repair crossover signaling, 22 grade crossings and slopes.